

REMARKS

Claims 1 and 13 have been amended. Support for these amendments can be found at, for example, FIGS. 1-4 of the Specification as filed.

The Rejections under 35 U.S.C. §§ 103(a)

Claims 1, 4, 10, 13, 16, and 22

Claims 1, 4, 10, 13, 16, and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,687,848 to *Scholz et al.* (“*Scholz*”), in view of U.S. Patent No. 3,387,701 to *Schneider et al.* (“*Schneider*”), and in further view of supposedly admitted prior art. Applicants respectfully traverse, noting that none of these references discloses every element of the claims as amended. More specifically, there has been no admission of prior art. Additionally, none of these references discloses zipper- or slider-type reclosable fasteners.

First, Examiner asserts that generally ovoid shaped bag bottoms are “admitted prior art because applicant failed to traverse” this statement in previous Office Actions (Office Action, p. 3). This is an incorrect statement. Applicants are not required to assert every possible argument in every response, and failure to do so does not amount to any admission. Examiner does not, and cannot, point to any authority or law supporting his proposition. Accordingly, Applicants traverse on at least the ground that Examiner has not presented any reference or other legitimate prior art that discloses any standup bag with any bottom end having a generally ovoid shape, and the pending claims are patentable for at least this reason.

Second, neither *Scholz* nor *Schneider* discloses any zipper- or slider-type reclosable fastener. *Schneider* does not disclose any reclosable fastener. As noted previously, *Scholz* at most only discloses magnetic fasteners. Examiner cites to 8:36-39 of *Scholz* as disclosing zipper-type fasteners. However, this portion of *Scholz* does not disclose zipper-type fasteners. Rather, it discloses interlocking magnetic strips, which are different from a zipper-type fastener. One of ordinary skill in this art does not consider interlocking magnetic strips to be a zipper-type fastener. Furthermore, it is Examiner’s burden to present evidence that the two are considered the same. *KSR Int’l. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In Re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements”). Examiner has not done so, and thus has not met the burden required to

show that interlocking magnetic strips are zipper-type fasteners, especially in light of a commonly-accepted understanding that the two are different.

Claims 1 and 13 are thus patentable over *Scholz* and *Schneider* for at least the reason that they recite a “reclosable fastener” having “at least one of a zipper or a slider.” Claims 10 and 22 depend from claims 1 and 13 respectively, and are thus also patentable for at least this same reason.

Third, as neither *Scholz* nor *Schneider* discloses zipper-type fasteners, neither can disclose reclosable fasteners with zipper-type fasteners, and certainly neither can disclose reclosable fasteners located substantially parallel to a side edge. Claim 1 and amended claim 13 are thus both patentable over *Scholz* and *Schneider* for at least the additional reason that they recite a reclosable fastener having a zipper or slider, and “oriented substantially parallel to the first side edge . . .”

Fourth, *Scholz* at most teaches magnetic fasteners located along two edges of a bag (e.g., Fig. 12) or extended out from the side of the bag (e.g., Fig. 14). *Scholz* does not disclose fasteners having both ends along the same side of the bag. Claim 1 as amended is thus patentable over *Scholz* and *Schneider* for at least the additional reason that it recites a reclosable fastener “located along the non-gusseted portion of the first side edge” and “wherein the reclosable fastener has sealed first and second ends and an opening therebetween, the sealed ends and the opening located along the non-gusseted portion of the first side edge.” Similarly, claim 13 as amended is patentable over *Scholz* and *Schneider* for at least the additional reason that it recites a reclosable fastener “having sealed first and second ends, the sealed ends located along, and substantially parallel to, the first side edge . . .”

Fifth, *Scholz* teaches away from Applicants’ claims, in that it explicitly teaches against use of zipper-type fasteners. In particular, *Scholz* teaches that its invention is intended to provide hermetically-sealed bags for use in storing moisture-curable synthetic splinting materials that require a moisture-impermeable seal (Col. 1:33-40). *Scholz* goes on to teach that zipper-type fasteners do not provide hermetic seals, and are thus undesirable:

The opening must be sealed between uses to avoid moisture penetration of the package and, therefore, curing of the product within the package. The disclosed methods of sealing the opening include clamps, such as tongue and groove scissor clamp; moisture-proof pressure-sensitive adhesive tape; a

“ZIPLOC™” brand-type seal; and gaskets used in conjunction with spring-loaded compression, leverage clamping or screw action devices.

These methods have proven less than desirable in use. The more secure of the devices are difficult to use which increases the amount of time the package is open during use, thereby allowing moisture to enter and harden the material therein. Conversely, the sealing methods which are easy to use form seals of questionable integrity which allow moisture penetration into the package even when the seal is closed.

(Col. 2:29-42) (emphases added)

In other words, to serve as the basis of a proper rejection, *Scholz* must disclose the use of zipper-type fasteners. Quite to the contrary, *Scholz* teaches against Applicants’ claims in that it explicitly teaches against use of zipper-type fasteners. *Scholz* thus cannot form the basis for any proper rejection under 35 U.S.C. § 103(a).

Claims 13, 16, and 33

Claims 13, 16, and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,007,246 to *Kinigakis et al.* (“*Kinigakis*”), in view of *Schneider*. Applicants respectfully traverse, noting that none of these references discloses every element of the claims as amended. More specifically, none of these references discloses a first side edge substantially perpendicular to a bottom end, or a first side edge with a length greater than a length of the bottom end.

Neither *Schneider* nor *Kinigakis* discloses a bag whose first side edge is substantially perpendicular to its bottom end. The “first side edge” of *Kinigakis*, as interpreted by Examiner, is oriented at “an angle within the range of approximately 25° to 65°, with respectively the upper horizontal and the vertical side edges . . .” (Col. 6:3-5). This means the “first side edge” of *Kinigakis* is oriented from 65° to 25° with respect to the bottom of its bag. *Schneider* also discloses bags whose side walls 18, 19 are oriented at angles with respect to base 16 (e.g., FIG. 1). Accordingly, claim 13 is patentable over both these references for at least the reason that it recites “first and second side edges extending between the top and bottom ends, the first side edge having a non-gusseted portion, the non-gusseted portion located proximate to the top end and substantially perpendicular to the bottom end.”

Additionally, neither *Schneider* nor *Kinigakis* discloses Applicants’ claimed first side edge with a length greater than a length of a bottom end. Initially, note that the “first side edge”

of claim 13 has a reclosable fastener located along its length, and that this edge has a length greater than a length of the bottom end. However, the “first side edge” of *Kinigakis* (edge 26, as asserted by Examiner) is clearly shorter than the length of its bottom end (e.g., FIG. 1). *Schneider* does not disclose any edge with a reclosable fastener, and thus cannot cure this deficiency in *Kinigakis*. Claim 13 is thus patentable over both these references for at least the additional reason that it recites a reclosable fastener having ends “located along, and substantially parallel to, the first side edge,” the first side edge having a length greater than a length of the bottom end.” Claims 16 and 33 each depend from claim 13 and are thus also patentable for at least these same reasons.

Claims 1, 4, 13, 16, 32, and 33

Claims 1, 4, 13, 16, 32, and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,941,643 to *Linkiewicz* (“*Linkiewicz*”) in view of *Kinigakis* and *Schneider*. Applicants respectfully traverse, noting that none of these references discloses every element of the claims as amended. More specifically, none of these references discloses a first side edge with a length greater than a length of a bottom end.

As above, neither *Schneider* nor *Kinigakis* discloses Applicants’ claimed first side edge with a length greater than a length of a bottom end. *Linkiewicz* does not cure the deficiency of *Schneider* and *Kinigakis*. *Linkiewicz* discloses a reclosable zip closure 30 located along top edge 24 (e.g., FIG. 1), rather than along a side edge. Even if the bag of *Linkiewicz* is turned on its side, so that zip closure 30 is located along a “side edge,” this new “side edge,” i.e. what was formerly top edge 24, is clearly shorter than the new “bottom end,” i.e. the former sides of the bag. Claim 1 is thus patentable over both these references for at least the reason that it recites a “reclosable fastener located along the non-gusseted portion of the first side edge,” where “the first side edge has a length greater than a length of the bottom end.” Similarly, claim 13 is patentable over both these references for at least the reason that it recites a reclosable fastener having ends “located along, and substantially parallel to, the first side edge,” the first side edge having a length greater than a length of the bottom end.”

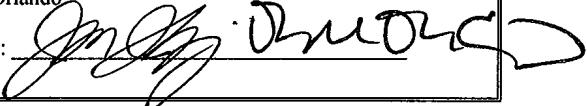
Claims 4 and 32 depend from claim 1, and claims 16 and 33 depend from claim 13. These claims are thus also patentable for at least these same reasons.

CONCLUSION

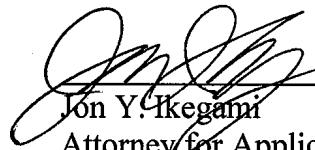
In view of the above, it is respectfully submitted that Claims 1, 3-4, 10, 13, 15-16, 22, and 32-33 are now in condition for allowance.

The Examiner is invited to call Applicant's attorney at the number below in order to speed the prosecution of this application.

The Commissioner is authorized to charge any deficiencies in fees and credit any overpayment of fees to Deposit Account 08-1394.

CERTIFICATE OF EFS-WEB TRANSMISSION
Certificate of Transmission: I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office (USPTO) via the USPTO's EFS-Web electronic system on
July 10, 2009
Typed or printed name of person signing this certificate: Robyne Orlando
Signature: 

Respectfully submitted,



Jon Y. Ikegami
Attorney for Applicant
Reg. No. 51,115

Haynes and Boone, LLP
2033 Gateway Place, Suite 400
San Jose, California 95110
Phone: 408.392.9250
Fax: (214) 200-0854
E-mail: ipdocketing@haynesboone.com